


# Administrative Office of the Courts

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## MEMORANDUM

To: Julia D'Alesandro, Audit Dept.

From:  Brent Johnson, General Counsel

Re: Prosecuting Cases Beyond the Statute of Limitations

Date: September 4, 2003

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This memorandum is in response to your e-mail of August 19, 2003 requesting guidance on the continued prosecution of cases after the statute of limitations has potentially run. After my memorandum dated November 4, 1996, the Utah Court of Appeals issued an opinion discussing the nature of statutes of limitation in criminal cases. In James v. Galetka, 965 P.2d 567 (Utah App. 1998), the Utah Court of Appeals determined that a criminal statute of limitation can be waived by a defendant. If a defendant knowingly and voluntarily enters a guilty plea after the statute of limitations has passed, then the plea is valid and the court can impose sentence. The result of this opinion is that statutes of limitation are not automatic prohibitions against prosecution.

It is still the best practice to ensure that an information is filed at the beginning of the case. If an information is filed, the case can remain indefinitely (subject to speedy trial rights). If an information is not filed, and a defendant raises the statute of limitations claim, the court will typically have no choice but to dismiss the case. Furthermore, the Utah Court of Appeals opinion did not answer the question of whether a prosecution can proceed against a defendant who does not plead guilty, but chooses to proceed to trial. The court's opinion only dealt with a knowing and voluntary waiver of the statute of limitations defense. It is therefore risky to continue a case beyond the statute of limitations, and therefore filing an information is still the best practice.

Although it is risky to continue a case beyond the statute of limitations, the court is not automatically required to dismiss cases that have run. The best option for the court may be to refer each of the cases to the prosecutor to determine whether the case should be dismissed or should

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efficient, and independent system for the advancement of justice under the law.**

continue. The court could also do this through an order to show cause, or notify the prosecutor of the cases and wait for a motion to dismiss. If the cases are not dismissed, and prosecution proceeds, the court can legitimately wait to see if the defendant raises the statute of limitations.

In your guidance to justice courts, you should remind them that the best practice is to ensure that an information is filed, but if an information is not filed, the case should probably be referred to the prosecutor to determine whether it should remain active.

Please let me know if you have any additional questions about this.